

**AGREEMENT FOR THE PURCHASE AND SALE OF  
AS-AVAILABLE ENERGY FROM  
A QUALIFYING FACILITY**

**between**

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**and**

**DUKE ENERGY CAROLINAS, LLC**

## AGREEMENT

This Agreement ("Agreement") is made and entered by and between \_\_\_\_\_, a \_\_\_\_\_, having its principal place of business at \_\_\_\_\_ (hereinafter referred to as the "Seller"), and Duke Energy Carolinas, LLC, a North Carolina limited liability company (hereinafter referred to as the "Company"). The Seller and the Company may be hereinafter referred to individually as a "Party" and collectively as the "Parties."

### WITNESSETH:

WHEREAS, Seller is a Qualifying Facility and desires to sell As Available Energy generated by the Facility and made available for sale to the Company, and Company desires to purchase the As Available Energy from the Facility pursuant to the terms specified herein; and

WHEREAS, the Seller has acquired or will acquire an interconnection/transmission service agreement with the utility in whose service territory the Facility is located, pursuant to which the Seller assumes contractual responsibility to make any and all transmission-related arrangements between the Seller and the Transmission Service Utility for delivery of the As Available Energy generated by the Facility to the Company. The Parties recognize that the Transmission Service Utility may be the Company and, in such event, that the transmission service will be provided under a separate agreement;

NOW, THEREFORE, for mutual consideration, the Parties covenant and agree as follows:

### ARTICLE I: DEFINITIONS

As used in this Agreement and in the Appendices hereto, the following capitalized terms shall have the following meanings:

- 1.1 **Commission** means the Public Service Commission of South Carolina, or any successor thereto.
- 1.2 **Company's Interconnection Facilities** means all equipment located on the Company's side of the Point of Delivery, including without limitation, equipment for connection, switching, transmission, distribution, protective relaying and safety provisions which in the Company's judgment is required

to be installed for the delivery and measurement of electric Energy into the Company's system on behalf of the Seller, including all metering and telemetering equipment installed for the measurement of such Energy regardless of its location in relation to the Point of Delivery.

- 1.3 **As-Available Energy** means Energy produced by the Facility and sold by Seller on an hour-by-hour basis for which contractual commitments as to quantity, time, or reliability of delivery are not required.
- 1.4 **Effective Date** means January 1, 2021.
- 1.5 **Emergency Condition** means: (i) any urgent, abnormal, operationally unstable, dangerous, and/or public safety condition that is existing on the System; (ii) any urgent, abnormal, operationally unstable, dangerous, and/or public safety condition that is likely to result in any of the following: (a) loss or damage to the Facility and/or the System, (b) disruption of generation by the Facility, (c) disruption of service or stability on the System, and/or (d) endangerment to human life or public safety; and/or, (iii) any circumstance that requires action by the System Operator to comply with standing NERC regulations or standards, including without limitation actions to respond to, prevent, limit, or manage loss or damage to the Facility, loss or damage to the System, disruption of generation by the Facility, disruption of service on the System, an abnormal condition on the System, and/or endangerment to human life or safety.
- Energy** means three-phase, 60-cycle alternating current electric power and energy, expressed in either kWh or MWh.
- 1.6 **Facility** means Seller's Cherokee County Cogeneration Facility located in Cherokee County, South Carolina, at [to be provided by Seller] and as further described in Exhibit A.
- 1.7 **FERC** means the Federal Energy Regulatory Commission and any successor thereto.
- 1.8 **Force Majeure Event** means an event or occurrence that is not reasonably foreseeable by a Party, is beyond its reasonable control, and is not caused by its negligence or lack of due diligence, including, but not limited to,

natural disasters, fire, lightning, wind, perils of the sea, flood, explosions, acts of God or the public enemy, strikes, lockouts, vandalism, blockages, insurrections, riots, war, sabotage, action of a court or public authority, or accidents to or failure of equipment or machinery, including, if applicable, equipment of the Transmission Service Utility.

- 1.9 **Governmental Authority** means any federal, state or local government, legislative body, court of competent jurisdiction, administrative agency or commission or other governmental or regulatory authority or instrumentality or authorized arbitral body, including, without limitation, the Commission.
- 1.10 **NERC** means the North American Electric Reliability Corporation. For purposes of this Agreement, NERC includes any applicable regional entity with delegated authority from NERC, such as the SERC Reliability Corporation (SERC).
- 1.11 **KW** means kilowatt.
- 1.12 **KWh** means kilowatt-hour.
- 1.13 **MW** means megawatt.
- 1.14 **MWh** means megawatt-hour.
- 1.15 **Point of Delivery** means the point(s) where the Facility is interconnected to the Company's transmission system and the electric Energy is delivered to the Company pursuant to this Agreement.
- 1.16 **Point of Metering** means the point(s) where electric Energy made available for delivery to the Company, subject to adjustment for losses, is measured.
- 1.17 **Prudent Utility Practice** means those practices, methods, equipment, specifications, standards of safety, and performance, as the same may change from time to time, as are commonly used in the construction, interconnection, operation, and maintenance of electric power facilities, inclusive of delivery, transmission, and generation facilities and ancillaries, which in the exercise of good judgment and in light of the facts known at the time of the decision being made and activity being performed are considered: (i) good, safe, and prudent practices; (ii) are in accordance with

generally accepted standards of safety, performance, dependability, efficiency, and economy in the United States; (iii) are in accordance with generally accepted standards of professional care, skill, diligence, and competence in the United States; and, (iv) are in compliance with applicable regulatory requirements and/or reliability standards. Prudent Utility Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of others, but rather are intended to include acceptable practices, methods and acts generally accepted in the energy generation and utility industry.

- 1.18 **PURPA** means the Public Utility Regulatory Policies Act of 1978, as amended, and as may be amended from time to time.
- 1.19 **Qualifying Facility or QF** means an electric generating facility that has been registered and certified by FERC as generator that qualifies for and meets the requirements set forth in PURPA, as it may be amended, and associated rules, regulations, orders.
- 1.20 **Requirements of Law** means any federal, state, and local law, statute, regulation, rule, code, ordinance, resolution, order, writ, judgment, decree or Permit enacted, adopted, issued or promulgated by any Governmental Authority, including, without limitation, (i) PURPA, (ii) those pertaining to the creation and delivery of Energy, (iii) those pertaining to electrical, building, zoning, occupational safety, health requirements or to pollution or protection of the environment, and (iv) principles of common law under which a person may be held liable for the release or discharge of any hazardous substance into the environment or any other environmental damage.
- 1.21 **System** means the transmission, distribution, and generation facilities that are owned, directed, managed, interconnected, controlled, and/or operated by Company, including, without limitation, facilities to provide retail and/or wholesale service, substations, circuits, reinforcements, meters, extensions, and equipment associated with or connected to any interconnected facility or customer.

- 1.22 **System Operator** means the operators of the System that have the responsibilities for ensuring that the System as a whole operates safely and reliably, including without limitation, the responsibilities to comply with any applicable operational or reliability requirements, the responsibilities to balance generation supply with customer load, and to provide dispatch and curtailment instructions to generators supplying Energy to the System, and includes any person or entity delivering any such instruction to Seller.
- 1.23 **System Operator Instruction** means any order, action, requirement, demand, or direction, from the System Operator in accordance with Prudent Utility Practice, and delivered to Seller in a non-discriminatory manner, to operate, manage, and/or otherwise maintain safe and reliable operations of the System, including, without limitation, an order to suspend or interrupt any operational activity due to an Emergency Condition or Force Majeure event; provided however, a System Operator instruction in response to an Emergency Condition, Force Majeure event, or operational condition relating specifically to or created by the Facility shall not be deemed or considered discriminatory.
- 1.24 **Transmission Service Utility** means the electric distribution utility with which the Facility will be directly and physically interconnected with for the purpose of delivering the As Available Energy to the Point of Delivery over the electrical system of the Transmission Service Utility pursuant to an interconnection agreement with the Transmission Service Utility. The Transmission Service Utility for purposes of this Agreement shall be Duke Energy Carolinas, LLC.

## ARTICLE II: FACILITY

- 2.1 Seller shall operate its Facility in compliance with all: (i) System Operator Instructions provided by Company; (ii) applicable operating guidelines established by the North American Electric Reliability Corporation (“NERC”); and (iii) the SERC Reliability Corporation (“SERC”) or any successor thereto.

- 2.2 The Facility shall meet all the specifications identified in Exhibit A attached hereto in all material respects and no change in the designated location of the Facility shall be made by Seller.
- 2.3 Throughout the Term of this Agreement, the Facility shall be a Qualifying Facility. In the event the Facility does not maintain its status as a Qualifying Facility, this Agreement shall be immediately deemed null and void as of said date and of no further effect.
- 2.4 Unless the Seller is already interconnected to a transmission or distribution system, no later than sixty (60) days after the Effective Date, the Seller shall apply to its Transmission Service Utility for transmission service including a system impact study, if required. The Seller shall continue the interconnection process in a timely manner to maintain its position in the interconnection queue.
- 2.6 The Seller intends to begin deliveries to the Company by January 1, 2021.

### ARTICLE III: TERM; RIGHT TO SUSPEND

- 3.1 **Term.** The Term of this Agreement shall begin on the Effective Date and shall remain in full force and effect until the one-year anniversary of the Effective Date unless earlier terminated by either Party based on one or more of the following termination rights:

**3.1.1 Termination by Seller:** Seller may terminate this Agreement for its convenience at any time, for any reason or no reason, by providing written notice to Company.

**3.1.2 Termination by Company.** The Company may terminate this Agreement by providing not less than thirty (30) days written notice to Seller based on any of the following: (i) Seller's default of any material term of this Agreement which has not been cured within thirty (30) days after Company's written notice of default to Seller; (ii) as permitted in Article 4.5 below, or (iii) if Company's legal obligation to purchase the Energy from the Facility has been terminated, including without limitation, pursuant to 18 C.F.R. Section 292.309.

Upon termination or expiration of this Agreement, the Parties shall be relieved of their obligations under this Agreement except for the obligation to pay each other all monies under this Agreement, which obligation shall survive termination or expiration.

- 3.2 **Right to Suspend.** Company, in addition to all other legal remedies available under this Agreement, may during the pendency of any of the below stated conditions, suspend its obligations under this Agreement based on: (i) an event of default by Seller, (ii) any unauthorized use of Company's meter, (iii) an Emergency Condition including, without limitation, any condition on Seller's side of the Point of Delivery actually known by Company to be, or which Company reasonably anticipates may be, dangerous to life or property.

**ARTICLE IV: PURCHASE OF AS-AVAILABLE ENERGY**

- 4.1 Seller shall sell and arrange for delivery of the As-Available Energy to the Company and the Company agrees to purchase, accept and pay for the As-Available Energy which the Company is able to receive at the Point of Delivery, in accordance with the terms and conditions of this Agreement.
- 4.2 Seller shall not commence initial deliveries of Energy to the Point of Delivery without the prior written consent of the Company, which consent shall not unreasonably be withheld.
- 4.3 No renewable energy certificates or environmental attributes (collectively, "RECs") are included under this Agreement and Seller shall retain any and all rights to own and to sell any and all RECs associated with the electric generation of the Facility.
- 4.4 During minimum load conditions on the Company's System, Seller shall comply with all System Operator Instructions, including without limitation, curtailment instructions.
- 4.5 In the event the Company has not received any deliveries of Energy from the Seller by the date specified in Article 2.6 of this Agreement for a period of six (6) months or more, then the Company may contact the Seller in writing at the address specified in Article 15 requesting confirmation that



Seller desires for this Agreement to continue. If Seller fails to confirm its desire to continue this Agreement within thirty (30) days after Company's written communication to Seller, then Company shall have the right to terminate this Agreement by providing written notice to Seller.

- 4.6 Deliveries of As-Available Energy to the Company shall be made in accordance to the following one-time-only option.

(\_\_\_\_) All deliveries of As-Available Energy from this Facility will be made to the Company.

(\_\_\_\_) As-Available Energy deliveries from this Facility will be made to the Company and to other parties.

#### **ARTICLE V: INTERCONNECTION**

- 5.1 Seller shall enter into an interconnection agreement in accordance with the Transmission Service Utility's interconnection standards and requirements applicable to the Facility as may be modified from time to time.
- 5.2 The Seller's interconnection scheduling and cost responsibilities and parallel operating procedures shall be those specified in a separate interconnection agreement with the Transmission Service Utility.
- 5.3 The location and voltage of the Point of Interconnection and the Point of Metering will be specified in the interconnection agreement and/or the transmission service agreement.
- 5.4 The interconnection agreement and/or transmission service agreement shall constitute separate agreement(s) between Seller and Transmission Service Utility, and will exclusively govern all requirements and obligations addressed therein and Seller shall be solely and fully responsible for all costs and expenses for which Seller is responsible for under the such interconnection agreement and/or transmission service agreement.

#### **ARTICLE VI: ENERGY DELIVERY AND PAYMENTS**

- 6.1 Contract Price. The "Contract Price" for Energy delivered to Company under this Agreement shall be the Company's avoided cost of Energy at the time the Energy is delivered to Company at the Point of Delivery as

calculated by Company in accordance with the methodology described in Exhibit B attached hereto.

- 6.2 Energy Delivery. Seller shall be fully responsible for all costs, charges, expenses, and requirements associated with delivering the Energy to Company at the Point of Delivery including all losses associated with delivering the Energy from the Facility over the electrical system of the Transmission Service Utility. Company will have no obligation to pay for any Energy not delivered to Company at the Point of Delivery.
- 6.3 Payment for Energy. On a monthly basis, during the Term of this Agreement, Company agrees to pay Seller the product of: (i) the Contract Price for the Energy multiplied by (ii) the amount of Energy delivered by Seller to Company at the Point of Delivery Point during each billing period.
- 6.4 Emergency Condition. Company shall be excused from any obligation to purchase, accept or receive Energy from the Facility due to an Emergency Condition or any curtailments resulting therefrom.
- 6.5 Transfer. In no event will Seller procure or have the right to procure the Energy or any portion thereof from any source other than the Facility for sale and delivery pursuant to this Agreement. Title to and risk of loss to the Energy sold and delivered hereunder shall transfer from Seller to Company after completion of delivery at the Point of Delivery. Seller shall be responsible for any costs and charges imposed on or associated with the Energy prior to the delivery of the Energy to Company. Company shall be responsible for any costs or charges imposed on or associated with the Energy after delivery to Company.

#### **ARTICLE VII: SELLER COMPLIANCE REQUIREMENTS**

- 7.1 **Required Approvals.** Seller shall at its sole cost and expense timely obtain, maintain, and comply with all Required Approvals (definition follows) during the Term of this Agreement. "Required Approvals" means all of the following:
  - (i) All approvals and certifications that the Facility is a Qualifying Facility.

(ii) All permits, authorizations, certifications, and/or approvals from any Governmental Authority and under any Requirements of Law, including, without limitation, from the Commission or FERC, for Seller to construct, build, own, operate, and maintain the Facility and sell and deliver the Energy to Company and meet its requirements under this Agreement.

7.2. **Seller Covenants.** Seller covenants and warrants to Company as of the Effective Date of this Agreement and throughout the Term of this Agreement that: (a) Seller has obtained an approved and valid certificate of public convenience and necessity for the Facility from the Commission; (b) Seller has submitted to the Transmission Service Utility and the Transmission Service Utility has accepted the completed interconnection request for the Facility; and (c) Seller has obtained all applicable certifications and/or approvals for the Facility from FERC. Seller will indemnify and hold Company harmless for any breach or failure relating to any of the foregoing covenants and warranties, notwithstanding anything else to the contrary in this Agreement.

7.3 **Seller Requirements.** Within twenty (20) Business Days of a written request from Company, Seller agrees to provide Company with all information, documents, and affidavits from a duly authorized representative of Seller certifying that the Facility fully complies with PURPA, including, without limitation, the PURPA Fuel Requirements.

## ARTICLE VIII: METERING

8.1 Meters will be read and bills rendered monthly. Readings are taken each month at intervals of approximately thirty (30) days.

8.2 The term "month" or "monthly" refers to the period of time between the regular meter readings by the Company, except that if the period covered by an initial or final bill, or due to rerouting of the meter reading schedule, is more 33 or less than 27 days, the bill will be prorated based on a 30-day billing month.

Company reserves the right to set off against any amounts due from the Company to Seller, any amounts which are due from Seller to Company, including, but not limited to, unpaid charges pursuant to the any interconnection and/or the transmission service agreement between Seller and Company, or past due balances on any accounts Seller has with Company for other services. All Energy delivered to the Company shall be adjusted for losses from the Point of Metering to the Point of Delivery.

- 8.3 **RECORDS.** In addition to the regular meter readings to be taken monthly for billing purposes, Company may require additional meter readings, records, transfer of information, etc. as may be agreed upon by the Parties. Company reserves the right to provide to the Commission or the FERC or any other regulatory body, upon request, information pertaining to this Agreement, including but not limited to: records of the Facility's generation output and Company's purchases thereof (including copies of monthly statements of power purchases and data from load recorders and telemetering installed at the Facility); copies of this Agreement.
- 8.4 **METER STOPPAGE OR ERROR.** In the event a meter fails to register accurately within the allowable limits established by the state regulatory body having jurisdiction, Company will adjust the measured Energy for the period of time the meter was shown to be in error, and shall, as provided in the rules and regulations of the state regulatory body having jurisdiction, pay to Seller, or Seller shall refund to Company, the difference between the amount billed and the estimated amount which would have been billed had the meter accurately registered the kilowatt hours provided by Seller. No part of any minimum service charge shall be refunded.

#### **ARTICLE IX: PAYMENT PROCEDURE**

- 9.1 Bills shall be issued and payments shall be made monthly to the Seller and by the Seller in accordance with the following procedures:
- 9.1.1 The electric Energy payment calculated for a given month shall be tendered, with cost tabulations showing the basis for payment, by the Company to the Seller as a single payment. Such payments to

the Seller shall be due and payable twenty (20) business days following the date the meters are read.

- 9.1.2 When any amount is owing from the Seller, the Company shall issue a monthly bill to the Seller with cost tabulations showing the basis for the charges. All amounts owing to the Company from the Seller shall be due and payable twenty (20) business days after the date of the Company's billing statement. Amounts owing to the Company for retail electric service shall be payable in accordance with the provisions of the applicable rate schedule.
- 9.1.3 At the option of the Seller, the Company will provide a net payment or net bill, whichever is applicable, that consolidates amounts owing to the Seller with amounts owing to the Company.
- 9.1.4 Payments to be made under this Contract shall, for a period of not longer than two (2) years, remain subject to adjustment based on billing adjustments due to error or omission by either Party.

#### **ARTICLE X: INSURANCE**

The provisions of this Article do not apply to a Seller whose Facility is not directly interconnected with the Company's System.

- 10.1 The Seller shall deliver to the Company, at least fifteen (15) days prior to the commencement of any work on the Company's Interconnection Facilities, a certificate of insurance certifying the Seller's coverage under a liability insurance policy issued by a reputable insurance company authorized to do business in the State of South Carolina naming the Seller as a named insured and the Company as an additional insured, which policy shall contain a broad form contractual endorsement specifically covering liabilities arising out of the interconnection with the Facility, or caused by the operation of the Facility or by the Seller's failure to maintain the Facility in satisfactory and safe operating condition.

The insurance policy providing such coverage shall include the following:

- (a) Workers' Compensation in accordance with the statutory requirements of the state in which the Services are performed and Employer's Liability

Insurance of not less than \$500,000 each accident/employee/disease; (b) Commercial General Liability Insurance having a limit of at least \$1,000,000 per occurrence/\$2,000,000 in the aggregate for contractual liability, personal injury, bodily injury to or death of persons, and damage to property, premises and operations liability and explosion, collapse, and underground hazard coverage; (c) Commercial/Business Automobile Liability Insurance (including owned (if any), non-owned or hired autos) having a limit of at least \$1,000,000 each accident for bodily injury, death, property damage and contractual liability; (d) Property Damage insurance on the Facility written on an all risk of loss basis; and, (e) if Seller will be handling or the Facility will have present environmentally regulated or hazardous materials, Pollution Legal Liability, including coverage for sudden/accidental occurrences for bodily injury, property damage, environmental damage, cleanup costs and defense with a minimum of \$1,000,000 per occurrence (claims-made form acceptable with reporting requirements of at least one (1) year).

The required insurance policy(ies) shall be endorsed with a provision requiring the insurance company to notify the Company at least thirty (30) days prior the effective date of any cancellation or material change in the policy.

- 10.2 The Seller shall pay all premiums and other charges due on said insurance policy and shall keep said policy in force during the entire period of interconnection with the Company.

#### **ARTICLE XI: CHANGE IN LAW**

- 11.1 **Regulatory Event.** A “Regulatory Event” means one or more of the following events: (i) Illegality. After the Effective Date, due to the adoption of, or change in, any applicable Requirements of Law or in the interpretation thereof by any Governmental Authority with competent jurisdiction, it becomes unlawful for a Party to perform any material obligation under this Agreement; and (ii) Adverse Government Action. After the Effective Date, there occurs any adverse material change in any

applicable Requirements of Law (including material change regarding a Party's obligation to sell, deliver, purchase, or receive the Energy) and any such occurrence renders illegal or unenforceable any material performance or requirement under this Agreement.

- 11.2 **Process.** Upon the occurrence of a Regulatory Event the Party affected by the Regulatory Event may notify the other Party in writing of the occurrence of a Regulatory Event, together with details and explanation supporting the occurrence of a Regulatory Event. Upon receipt of such notice, the Parties agree to undertake, during the thirty (30) days immediately following receipt of the notice, to negotiate such modifications to reform this Agreement to remedy the Regulatory Event and attempt to give effect to the original intention of the Parties. Upon the expiration of the 30-day period, if the Parties are unable to agree upon modifications to the Agreement that are acceptable to each Party, in each Party's sole discretion, then either Party shall have the right, in such Party's sole discretion, to terminate this Agreement with a 30-day advance written notice.

## **ARTICLE XII: FACILITY RESPONSIBILITY AND ACCESS**

- 12.1 Representatives of the Company shall at all reasonable times have access to the Facility and to property owned or controlled by the Seller and having relationship to the interconnection for the purpose of inspecting, testing, and obtaining other technical information deemed necessary by the Company in connection with this Agreement. Any inspections or testing by the Company shall not relieve the Seller of its obligation to maintain the Facility.
- 12.2 In no event shall any Company statement, representation, or lack thereof, either express or implied, relieve the Seller of its exclusive responsibility for the Facility and its exclusive obligations, if applicable, with the Transmission Service Utility. Any Company inspection of property or equipment owned or controlled by the Seller or the Transmission Service Utility, or any Company review of or consent to the Seller's or the

Transmission Service Utility's plans, shall not be construed as endorsing the design, fitness or operation of the Facility or the Transmission Service Utility's equipment nor as a warranty or guarantee.

#### **ARTICLE XIII: INDEMNIFICATION**

- 13.1 The Seller agrees to indemnify and save harmless the Company and its employees, officers, and directors against any and all liability, loss, damage, costs or expense which the Company, its employees, officers and directors may hereafter incur, suffer or be required to pay by reason of negligence on the part of the Seller in performing its obligations pursuant to this Agreement or the Seller's failure to abide by the provisions of this Agreement. The Company agrees to indemnify and save harmless the Seller and its employees, officers, and directors against any and all liability, loss, damage, cost or expense which the Seller, its employees, officers, and directors may hereafter incur, suffer, or be required to pay by reason of negligence on the part of the Company in performing its obligations pursuant to this Agreement or the Company's failure to abide by the provisions of this Agreement.

#### **ARTICLE XIV: EXCLUSION OF INCIDENTAL CONSEQUENTIAL AND INDIRECT DAMAGES**

- 14.1 Neither Party shall be liable to the other for incidental, consequential or indirect damages, including, but not limited to, the cost of replacement power, whether arising in contract, tort, or otherwise.

#### **ARTICLE XV: COMMUNICATIONS**

- 15.1 Any non-emergency or operational notice, request, consent, payment or other communication made pursuant to this Agreement to be given by one Party to the other Party shall be in writing, either personally delivered or mailed to the representative of said other Party designated in this section, and shall be deemed to be given when received. Notices and other communications by the Company to the Seller shall be addressed to:

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Notices to the Company shall be addressed to:

Duke Energy Carolinas, LLC

Overnight Mail: 400 South Tryon Street  
Mail Code: ST 14A  
Charlotte, North Carolina 28202  
Attn.: Director, Business Development and Compliance

Regular Mail: PO Box 1010  
Mail Code: ST 14A  
Charlotte, NC 28201-1010  
Attn.: Director, Business Development and Compliance

Email: DERContracts@duke-energy.com

With Additional Notices of Events of Default  
Or Potential Event of Default to:

Overnight Mail: 550 S. Tryon St.  
Charlotte, North Carolina 28202  
Attn.: VP Commercial Legal Support

Regular Mail: P.O. Box 1321, DEC45  
Charlotte, North Carolina 28201-1321  
Attn.: VP Commercial Legal Support

- 15.2 Communications made for emergency or operational reasons may be made to the following persons and shall thereafter be confirmed promptly in writing.

To: Company: System Dispatcher on Duty  
Title: System Dispatcher  
Telephone: (800) 225-5838

- 15.3 Either Party may change their respective contact information in this section by prior written notice to the other Party.
- 15.4 The Parties' representatives designated above shall have full authority to act for their respective principals in all technical matters relating to the

performance of this Agreement. However, they shall not have the authority to amend, modify, or waive any provision of this Agreement.

**ARTICLE XVI: ASSIGNMENT**

- 16.1 **Limitation.** Except as set forth below with respect to pledging as collateral security, Seller shall not assign, pledge, or encumber this Agreement, or any rights or obligations under the Agreement, or any portion hereunder, without Company's prior written consent, which consent shall not be unreasonably withheld. Any proposed assignee shall agree in writing, in a form reasonably acceptable to Company, to be bound by the terms and conditions hereof. Notwithstanding anything to the contrary herein, Company may pledge, encumber, or assign this Agreement without any restriction.
- 16.2 **Pledge.** Seller may, without prior consent of Company but with no less than ten (10) business days prior written notice to Company, pledge as collateral security this Agreement to a financing party in connection with any loan, lease, or other debt or equity financing arrangement for the Facility. Any pledge of this Agreement as collateral security will not relieve Seller of any obligation or liability under this Agreement, and it will not create any rights, including any third party beneficiary rights, for any person under this Agreement.
- 16.3 **Notification of Transfer or Sale of Facility.** In the event of any sale or transfer of the Facility or the Certificate of Public Convenience and Necessity, the Seller shall, in addition to obtaining the approvals hereof, provide a minimum of 30 days prior written notice advising Company and the Commission of any plans for such sale or transfer, or of any accompanying significant changes in the information required by Commission Rule R8-64, R9-65 or R8-66.

**ARTICLE XVII: CONFIDENTIALITY**

- 17.1 **Protected Information.** Except as otherwise set forth in this Agreement, neither Party shall, without the prior written consent of the other Party, disclose any term of this Agreement or any information relating to this

Agreement, or any discussion or documents exchanged between the Parties in connection with this Agreement (such information, the “Protected Information”) to any third person, other than the Party’s Representatives (as defined below) who have a need to know such information in order to carry out the intended purpose of this Agreement or in connection with the construction, operation, maintenance, financing, sale or purchase of the Facility and who have agreed to keep such terms confidential subject to similar confidentiality restrictions as those set forth herein. As used herein the term “Representative” shall include a Party’s employees, affiliates, counsel, accountants, and current and prospective lenders and investors in the Facility. Each Party shall be liable in the event of a breach of such confidentiality obligation by its Representative. Each Party shall be entitled to all remedies available at law or in equity, including but not limited to specific performance and/or injunctive relief, to enforce, or seek relief in connection with this confidentiality obligation. The confidentiality restrictions set forth in this Article 17 shall survive the expiration or termination of this Agreement for a period of five (5) years after such expiration or early termination as applicable.

- 17.2 **Non-Protected Information.** Protected Information does not include information: (i) that is or becomes available to the public other than by disclosure of receiving Party in breach of this Agreement; (ii) known to receiving Party prior to its disclosure; (iii) available to receiving Party from a third party who is not bound to keep such information confidential; or, (iv) independently developed by the receiving Party without reliance upon the Protected Information.
- 17.3 **Return of Protected Information.** Upon request of disclosing Party, receiving Party shall either: (i) return the Protected Information, including all copies, or (ii) destroy the Protected Information, including all copies, and present written assurances of the destruction to disclosing Party. Notwithstanding the foregoing, both Parties acknowledge that Protected Information transferred and maintained electronically (including e-mails)

may be automatically archived and stored by Receiving Party on electronic devices, magnetic tape, or other media for the purpose of restoring data in the event of a system failure (collectively, "Back-Up Tapes"). Notwithstanding the terms of this Agreement, in no event shall Receiving Party be required to destroy Protected Information stored on Back-Up Tapes; provided, however, any Protected Information not returned or destroyed pursuant to this Article shall be kept confidential for the duration of its existence. Furthermore, the receiving Party may retain one (1) copy of such Protected Information in receiving Party's files solely for audit and compliance purposes for the duration of its existence; provided, however, such Protected Information shall be kept confidential for the duration of its existence in accordance with the terms of this Agreement.

- 17.4 **Required Disclosure.** Except as specified in Article 17.5 below, in the event the receiving Party or its Representative is required, pursuant to any applicable court order, administrative order, statute, regulation or other official order by any Governmental Authority or any agency or department thereof to disclose any Protected Information, the receiving Party shall: (i) provide the disclosing Party with prompt written notice of any such request or requirement so that the disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement; and (ii) reasonably cooperate with the disclosing Party to obtain such protective order or other remedy. In the event such protective order or other remedy is not obtained or the disclosing Party waives compliance with the relevant provisions of this Agreement, the receiving Party agrees to (a) furnish only that portion of the Protected Information for which the disclosing Party has waived compliance with the relevant provisions of this Agreement or which, in the opinion of receiving Party's legal counsel, the receiving Party is legally required to disclose, (b) upon the disclosing Party's request and expense, use its commercially reasonable efforts to obtain assurances that confidential treatment will be accorded to such information, and (c) give the disclosing Party prior

written notice of the Protected Information to be disclosed as is reasonably practicable.

- 17.5 **Disclosures by Company.** This Article 17.5 will apply notwithstanding anything to the contrary in this Agreement. Seller understands and acknowledges that Company is regulated by various regulatory and market monitoring entities. Company is permitted, in its sole discretion, to disclose or to retain and not destroy (in case of a future disclosure need as determined by Company in its sole discretion) any information (including Protected Information) to any Governmental Authority or any other regulator or legislative body without providing prior notice to or obtaining the consent of Seller, using Company's business judgment and the appropriate level of confidentiality Company seeks for any such disclosures or retentions in its sole discretion.

**ARTICLE XVIII: SECTION HEADINGS FOR CONVENIENCE**

- 18.1 Article or section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

**ARTICLE XIV: GOVERNING LAW**

- 19.1 The interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the State of South Carolina.

**IN WITNESS WHEREOF**, Seller and Company have caused this Agreement to be executed by their respective duly authorized officers as of the Effective Date.

**Duke Energy Carolinas, LLC**

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

[Seller \_\_\_\_\_]

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

**Exhibit A – to be provided by Seller**Facility Information

1. Facility Name:
2. Facility Address:
3. Description of Facility (include number, manufacturer and model of Facility generating units, and layout):
4. Nameplate Capacity Rating:
5. Fuel Type/Generation Type: Natural Gas
6. System Operator Instruction Dispatch Control Equipment: Full automatic generation control, as applicable to the Facility.
7. Site Map (include location and layout of the Facility, equipment, and other site details):
8. Delivery Point Diagram (include Delivery Point, metering, Facility substation):

UPON EXECUTION OF THE AGREEMENT TO WHICH THIS EXHIBIT IS ATTACHED, ANY MATERIAL MODIFICATION TO THE FACILITY SHALL REQUIRE BUYER'S PRIOR APPROVAL AND SHALL BE MEMORIALIZED IN WRITING IN AN AMENDMENT TO THE AGREEMENT.

**Exhibit B****METHODOLOGY FOR CALCULATING AS AVAILABLE ENERGY****Introduction:**

A production cost model is utilized to determine the hourly avoided energy cost as the basis for purchase of as-available energy from qualifying facilities at the time of delivery to the Company. All economic, unit constraint, and system requirements data necessary for program execution is based on real time data accumulated during the hour that energy was received.

**Production Cost Model Program Execution:**

The production cost model is executed with the following hourly input data for the desired period:

1. Unit constraint data to simulate actual unit operating conditions and availability.
2. Resource economic data consistent with the data used in the actual dispatch of energy resources. This includes a replacement cost of fuel, variable operating and maintenance expense, EPA emission allowances and reagents.
3. System load actually experienced.
4. Energy transferred between Duke Energy Carolinas and Duke Energy Progress per the Joint Dispatch Agreement.
5. Off-system sales and purchases of energy.

The unit commitment program is executed a second time for the same period with a nominal increase in the hourly system load. All other data remain the same.

**Determination of Energy Price:**

A comparison of the production cost model executions described above produces the as-delivered energy prices. The hourly cost of the second execution minus the corresponding hourly cost of the first execution equals the hourly energy cost avoided by the Company as a result of the energy supplied by the QF.